

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

DECEMBER 1995 SESSION

<p>FILED</p> <p>January 26, 1996</p> <p>Cecil W. Crowson Appellate Court Clerk</p>

<p>BENEDICT JOSEPH COOK, III, Appellant, V. STATE OF TENNESSEE, Appellee.</p>	<p>)) C.C.A. No. 01C01-9505-CR-00147)) Davidson County)) Hon. Walter C. Kurtz, Judge)) (Post-Conviction))</p>
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FOR THE APPELLANT:

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OPINION FILED: _____

AFFIRMED

PAUL G. SUMMERS,
Judge

OPINION

Appellant, Benedict Joseph Cook, III, was convicted of three counts of aggravated rape and two counts of aggravated sexual battery. This Court upheld his convictions and the Tennessee Supreme Court granted certiorari. The Supreme Court's final action, reinstating the trial court's judgment, occurred on November 12, 1991. On December 15, 1994, appellant filed for post-conviction relief. The trial court dismissed his petition as untimely. We affirm.

Appellant maintains that he filed his original pro se petition for post-conviction relief in 1993. He, however, asserts that he mistakenly filed this petition with the wrong court. Upon realizing his mistake, approximately one year later, he filed the present pro se petition with the proper court.

Both the appellant's petition and brief were drafted pro se. Upon careful review of his petition and brief, we find his relevant argument raises whether a pro se petition filed in the wrong court could feasibly be deemed timely. Appellant, however, is unable to offer sufficient proof to corroborate or substantiate his bare allegation of filing a petition for relief in 1993. He has neither produced the original nor a file stamped or notarized photocopy of the 1993 petition. Appellant's mere allegation of filing a timely pleading in the wrong court does not afford him relief. To hold otherwise would open the floodgates to untimely petitioners claiming to have filed their original petitions with the wrong court. Accordingly, pursuant to Tenn. R. Ct. Crim. App., Rule 20, we find no error of law requiring reversal of the trial court's dismissal.

AFFIRMED

PAUL G. SUMMERS, Judge

CONCUR:

JOE B. JONES, Presiding Judge

JOSEPH M. TIPTON, Judge